IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7016 OF 2007

Group Gram Panchayat, Karav Ors. .. Petitioners

V/s

The State of Maharashtra & Ors. .. Respondents

Mr.C.G. Gavnekar for the petitioners.

Mr.N.P. Deshpande, A.G.P. for the respondents.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE OF RESERVING THE JUDGMENT : 23RD OCTOBER 2007

DATE OF PRONOUNCING THE JUDGMENT: 24TH OCTOBER 2007

ORAL JUDGMENT: (Per D.G. Karnik, J.)

1. Heard.

2. By this petition, the petitioners challenge the notification dated 12th June 2007 issued by the respondent no.1 under section 4 of the Bombay Village Panchayats Act, 1958 (for short "Village Panchayats Act") declaring that the group of revenue villages Karav, Kharchirbi, Kharkarabi, Kharghat Khardevli, Kharmachela, Kharjambhela and Khardombi would constitute a local area by name village Karav for the purposes of

Village Panchayats Act.

3. Prior to the year 1984, group of revenue villages/hemlets, namely Karav, Kharchirbi, Kharkarabi, Kharghat Khardevli, Kharmachela, Kharjambhela and Khardombi were comprised in a local area by name village Karav. In exercise of the powers conferred under section 4 of the Village Panchayats Act, the respondent no.1 bifurcated the local area of the said group of revenue villages into two local areas, viz. village Karav and village Kharmachela by issuing a notification in the government gazette dated 26th July 1984. This was done inspite of the opposition of the villagers in the villages. It appears that the villagers in the group of revenue village of Kharmachela were so dissatisfied with the bifurcation that they even bycotted the general election. The State Election Commission taking notice inquired into the matter and reported to the government that the bifurcation was not proper and was also not made by following geographical principles of contiguity. The State Election Commission therefore recommended to the government for taking suitable action. The government thereafter proposed to nullify the bifurcation made in the year 1984 and again combine all the aforementioned group revenue villages into one local area to be known as village "Karav". Accordingly, after following the proper procedure, a

notification dated 12th June 2007 has been issued combining the aforesaid group revenue villages into one local area under the name village "Karav". That notification is impugned in this petition.

4. Learned counsel for the petitioners submitted that the procedure required to be followed before issuing of notification and declaration of village under section 4 of the Village Panchayats Act was not followed, inasmuch as proper opportunity of raising an objection to the proposal of unification and proper notice of the proposal was not given to the villagers of old village "Karav". He invited our attention to a decision of a Division Bench of this Court rendered in **Ashok Ganpat Jadhav v. State Election Commission & anr., reported in 2000 (4) M.L.J. 150**. In the said decision, after referring to the decisions of the Supreme Court in the State of U.P. v. Pradhan Singh Kshetra Samiti & Ors., AIR 1995 SC 1512; Visakhapatnam Municipality v. Kandregula Nukaraju, AIR 1975 SC 2172; S.L. Kapoor v. Jagmohan, AIR 1981 SC 136; Baldev Singh & Ors. v. State of Himachal Pradesh, AIR 1987 SC 1239 and Sundardas Kanyalal Bhathija & Ors. v. The Collector, Thane, Maharashtra, AIR 1990 SC 261, the Division Bench held that after the introduction of Part IX in the Constitution of India and the consequent amendment to the provisions of section 4 of the Village

Panchayats Act, an opportunity of hearing to the villagers before the de-limitation order passed was mandatory. The Court further held that this opportunity of hearing may be given by way of displaying notice on the village Chawdi/Panchayat or any place prominent in the respective wards and/or by giving a public notice by beat of drums though it may not be necessary to give individual notice of hearing to every villager. Learned counsel for the petitioners submitted that an opportunity of hearing was not given to the petitioners in the present case. He submitted that no notice, as was held to be mandatory in the decision of Ashok Ganpat Jadhav (supra), was never given. The impugned notification, which was issued without giving appropriate notice, was therefore bad in law and was required to be set aside. Per contra, Mr.Deshpande, A.G.P., submitted that appropriate opportunity of hearing was given to the petitioners. In this connection, he referred to and relied upon the affidavit in reply sworn in by Shilpa Prakash Rajpurkar, Under Secretary to the Government, Rural Development Department. In paragraph 1 of the affidavit in reply, the affiant has affirmed that the proper procedure as laid down under section 4 of the Village Panchayats Act was followed and the relevant gram panchayats were consulted by the State Government. In paragraph 8 of the affidavit, she has stated that in view of the report

of the State Election Commission, by letter dated 16th December 1995 the State Government requested the Chief Election Officer, Zilla Parishad, Raigad to carry out necessary inquiry and report to the State Government through the Commissioner, and the decision of unification was taken thereafter. In paragraph 8, she has further stated as follows:-

> "I say that in pursuance to the said request, meeting of Gram Sabhas of both the villages was called. The Gram Sabha of Gram Panchayat Karav passed a resolution opposing the proposal as proposed by the villagers of Kharmachela. Hereto annexed and marked as Exhibit-7 is the copy of the resolution of the Gram Panchayat of Karav opposing the proposal of Gram Sabha, Kharmachela."

5. Learned A.G.P. has also produced for our inspection the original government files relating to the decision of unification of villages. Perusal of the files also shows that a meetings of the Gram Sabhas were invited in both groups of revenue villages Karav and Kharmachela. Gram Sabha of group of revenue village Kharmachela supported the unification while the Gram Sabha of group of revenue village Karav opposed it.

7. Section 2(14) of the Village Panchayats Act defines "panchayat" to mean a panchayat established under section 10 and it consists of members elected in accordance with section 11 of the Act. Section 2(9) of the Village Panchayats Act defines "Gram Sabha" to mean a body consisting of persons registered in the electoral roll relating to village comprised within the area of the panchayat. Thus, while panchayat consists of elected members, Gram Sabha consists of entire body of voters. Rule 6 of Bombay Village Panchayats (Gram Sabha Meetings) Rules, 1959 provides that notice of meeting of the Gram Sabha shall be published by affixing it at the office of the Panchayat and the village chavdi or chora and in the absence of village chavdi or chora at any other conspicuous place or places in the village, and by making an announcement by a beat of drum on the fourth day and also on the day immediately preceding the date of the meeting. It is nobody’s case that Rule 6 was not followed and we have to assume that all official acts have been properly done and meetings of Gram Sabhas have been properly held after proper notice. Thus, a notice regarding the proposed unification of the villages was issued in accordance with Rule 6 by publication in village chavdi and also by beat of drums. This is a compliance of the requirement of opportunity of hearing as laid down by a Division Bench of this Court in Ashok Ganpat Jadhav v. State Election Commission (supra). We

therefore find no merit in the contention that proper opportunity of hearing was not given to the villagers group of old village Karav and/or proper notice was not given to them.

8. No other point was urged.

9. For the reasons aforesaid, there is no merit in the petition, which is hereby rejected.

(D.G. KARNIK, J.) (S.B. MHASE, J.)